But beyond that, the decree should not operate to bind anyone who had not joined in the contest which it decided. For purposes of administration, as the Supreme Court now tells us, the statute speaks through the decree, and the latter consequently has "a legislative effect." It is, however, quite different to say that a stranger is bound by any finding of fact established by the judgment. The rule which requires the stranger to respect the status or title conferred by the adjudication, does not extend to his being bound by the reasoning which lead up to the decree.[14] As he was not heard on such questions, he should not be denied a chance to discuss them; it is enough if he is required to respect the title which the judgment confers upon the trustee, executor, or other officer of administrative functions.

Such is the law as we now have it; and no longer should any court speak of an adjudication of bankruptcy as establishing anything but that the trustee is properly in office and clothed with a title to all the estate that was of the bankrupt. Beyond that the Supreme Court did not go. It refrained from deciding whether the adjudication, as read in the light of the master's report and the petition upon which it was founded, was admissible as rebuttable evidence of insolvency during the four months' period.

A footnote reference, however, to cases holding that the bankrupt's schedules are admissible to show insolvency in a suit by the trustee against the third party[15] suggests a hint that the adjudication is competent in that regard. This does not accord with strict logic, but the proposition may be regarded as established by such a weight of tradition, if not of authority, as to constitute an acceptable rule of adjective law.

G. G.

THE MEANING OF "CAUSED BY IT" IN SEC. 20 OF THE ACT TO REGULATE COMMERCE.—While at common law the common carrier's duty to carry was limited by its holding out and, therefore, it was not bound to carry beyond its own lines,[1] the carrier was bound to receive and carry goods to the end of its line and there forward them,[2] in which case it was not responsible for the goods in the possession of succeeding carriers[3] unless it voluntarily contracted for through trans-

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[14] Brigham *v.* Fayerweather (1886) 140 Mass. 411, 5 N. E. 265; Tilt *v.* Kelsey (1907) 207 U. S. 43, 28 Sup. Ct. 1.

[15] Hackney *v.* Hargreaves (1907) 68 Neb. 633, 99 N. W. 675; *in re* Docker-Foster Co. (D. C. 1903) 123 Fed. 190.

[1] Mulligan *v.* Illinois Cent. Ry. (1873) 36 Iowa 181.

[2] Seasongood, Stix, Krouse Co. *v.* Tennessee & Ohio River Trans. Co. (1899) 21 Ky. L. R. 1142; Railroad Co. *v.* Manufacturing Co. (1872) 83 U. S. 318; Rawson *v.* Holland (1875) 59 N. Y. 611.

[3] Myrick *v.* Michigan Cent. R. R. (1882) 107 U. S. 102, 1 Sup. Ct. 425.

portation.[4] The common form of receipt was one by which the shipper was forced to make an agreement limiting the liability of each carrier to its own part of the through route. When the goods arrived at their destination in a damaged condition, the shipper was not in possession of the information as to when and where the injury had occurred. Access to the records of the carriers which had participated in the transportation was difficult, which sometimes resulted in several suits against succeeding carriers before the one through whose default the loss occurred was located, and more often the shipper had to go a great distance to institute suit. The result, as a practical matter, was that he was frequently compelled to make such settlement as should be proposed.[5]

It was mainly to remedy this situation[6] that the Carmack Amendment to the Hepburn Act[7] was passed in 1906, stating that, "any common carrier, railroad, or transportation company receiving property for transportation . . . shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier . . . to which such property may be delivered". The phrase "caused by it" is, to say the least, ambiguous. The literal meaning would seem to imply that it includes only acts of misfeasance or nonfeasance, but does not apply to losses occurring for reasons beyond the carrier's control. But it is maintained that the only interpretation consonant with the intent and purpose of the Act, is that the phrase refers to losses under such circumstances as would render the carrier liable at common law; namely, an insurer's liability for all losses except those caused by the act of God, the public enemy, the shipper, public authority, or the inherent vice or nature of the goods.

In support of the literal interpretation of the Act there is a deci-

[4] Chicago, I. & L. Ry. *v.* Woodward (1904) 164 Ind. 360, 73 N. E. 810; Perkins *v.* Portland, S. & P. R. R. (1859) 47 Me. 573. In the absence of any qualifying agreement, the English courts hold that the mere receipt of property for transportation to a point beyond the line of the receiving carrier, justifies an inference of an agreement for through transportation, and the assumption of full carrier liability throughout, by the initial carrier. Muschamp *v.* Lancaster Ry. (1841) 8 M. & W. *421; Bristol & Exeter Ry. *v.* Collins (1858) 7 H. C. L. *194; Hutchinson, Carriers (3rd ed.) §§ 228, 229. The English rule is followed in a few American jurisdictions, Mulligan *v.* Illinois Cent. Ry., *supra,* footnote 1, but the weight of authority is the other way, holding that the carrier will be presumed to be a forwarder only, in the absence of a contrary express agreement and the burden of proof is upon the shipper to prove that such an agreement was made. Myrick *v.* Michigan Cent. R. R., *supra,* footnote 3; Hutchinson, op. cit., § 231.

[5] For a statement of the condition of affairs existing at this time, see that of Justice Lurton in Atlantic Coast Line R. R. *v.* Riverside Mills (1911) 219 U. S. 186, 199, 31 Sup. Ct. 164.

[6] For a statement of the purposes of the Act and of the matter which it sought to remedy see the speech of Judge William Richardson, 40 Cong. Rec. 9580.

[7] 34 Stat. 595.

sion of an Oklahoma court,[8] numerous declarations of the Interstate Commerce Commission[9] and *dicta* in the state courts.[10] To insist upon this construction, however, is practically to defeat the main purpose of the Amendment. A shipper delivers goods to a New York railroad to be delivered to a consignee in San Francisco. The goods are lost en route. The shipper sues the initial railroad, proves delivery to the railroad, failure to deliver to the consignee, and rests. A presumption arises that the goods were lost through the default of the carrier.[11] The railroad then proves that the goods were stolen from the X railroad (a connecting carrier) without any fault on its part, which would not be "caused by it" under the above interpretation, and the initial carrier thus obtains judgment in its favor. Then the shipper sues the X railroad under its common law liability, the provision of the Act stating that "nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law".[12] Thus the shipper is forced to sue twice to collect his claim. His remedy against the initial carrier is rendered doubtful and uncertain; he is denied the advantage of instituting suit against the conveniently located initial carrier, and in one suit only, completely litigating his claim; but may be put to heavy expense, and forced to a great distance to institute suit, contrary to the intent of the Act.[13]

Under the proviso reserving to the shipper the rights he has under

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[8] Missouri, O. & G. Ry. *v.* French (Okla. 1915) 152 Pac. 591.

[9] In the Matter of Released Rates (1908) 13 I. C. C. 550, 552, the commissioner said: "The word 'caused' is . . . broad enough to comprehend all losses due to the carrier's misconduct, whether positive or negative in character. But it cannot possibly be extended to cover losses due to causes beyond the carrier's control." See, to the same effect, *In re* Cummins Amendment (1915) 33 I. C. C. 682, 695; Cronch Grain Co. *v.* Atchison, T. & S. F. Ry. (1916) 41 I. C. C. 717. But *cf.* the statements of the Commission in the Matter of Bills of Lading (1919) 52 I. C. C. 671, especially pp. 695, 696, 708, 709. However, as the Commission does not take jurisdiction over claims for damage to goods in transit, it must be recognized that the problem is essentially one for the courts. See In the Matter of Released Rates, *supra.*

[10] See Bernard *v.* Adams Express Co. (1910) 205 Mass. 254, 258, 91 N. E. 325.

[11] The doctrine of presumption of default under the Act was first laid down in Atlantic Coast Line R. R. *v.* Riverside Mills, *supra,* footnote 5. It was followed in Galveston, H. & S. A. Ry. *v.* Wallace (1912) 223 U. S. 481, 32 Sup. Ct. 205, and in Chicago & E. I. R. R. *v.* Collins Produce Co. (1919) 39 Sup. Ct. 189.

[12] Georgia, Fla. & Ala. Ry. *v.* Blish Milling Co. (1916) 241 U. S. 190, 36 Sup. Ct. 541.

[13] See footnote 6, *supra. Cf.* the statement by R. M. Perkins, 4 Iowa Law Bulletin 86, 103: "Reading the paragraph as a whole(*i. e.,* the paragraph containing the clause 'caused by it') it is clear that the intention of Congress was that the shipper might sue the initial carrier and leave the companies to settle the ultimate responsibility among themselves. This intention being clear, we are not at liberty to separate one phrase from its context and then attach to it a meaning which will cause the enactment to defeat itself."

existing law, the liability of the initial carrier for losses occurring on its own line, is the liability imposed by the common law. The Supreme Court has laid down the rule that the connecting carrier is to be treated as an agent of the initial carrier, whose liability for losses occurring on the line of the connecting carrier is the same as though it had occurred on its own line.[14] With these two statements as premises, it would be easy to construct a syllogism, with the conclusion that the common law liability is imposed upon the initial carrier for losses occurring at any point on the through route.

In further support of this position are certain provisos of the Cummins' Amendment of 1915, as amended in 1916,[15] which supplemented the Carmack Amendment. The Carmack Amendment had been construed not to alter the principle of the Hart case[16] and allowed carriers to limit their liability to an agreed amount based on agreed valuation,[17] to relieve themselves of their insurer's liability by special contract,[18] and to make other reasonable provisions.[19] The Cummins Amendment[20] was aimed at this very practice and made the carrier liable for the full actual loss, damage or injury, any agreements as to limitations or representations as to value, notwithstanding, except that as to all freight other than ordinary live stock

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[14] Atlantic Coast Line R. R. *v.* Riverside Mills, *supra,* footnote 5 at p. 205; Galveston, H. & S. A. Ry. *v.* Wallace, *supra,* footnote 11 at p. 491.

[15] 38 Stat. 1197, amended, 39 Stat. 441.

[16] Hart *v.* Pennsylvania R. R. (1884) 112 U. S. 331, 5 Sup. Ct. 151.

[17] In Adams Express Co. *v.* Croninger (1913) 226 U. S. 491, 33 Sup. Ct. 148, a contract based on valuation was allowed, the court saying that such a contract was not an exemption from liability for negligence in the management of property, but was merely to define and describe the value of that which comes into the carrier's possession, and for which he must account in the performance of his duty as a common carrier. To the same effect, Kansas Southern Ry. *v.* Carl (1913) 227 U. S. 639, 33 Sup. Ct. 391; Missouri, Kans. & Tex. Ry. *v.* Harriman (1913) 227 U. S. 657, 33 Sup. Ct. 397; Pierce Co. *v.* Wells, Fargo & Co. (1915) 236 U. S. 278, 283, 35 Sup. Ct. 351; Cincinnati & T. Pac. Ry. *v.* Rankin (1916) 241 U. S. 319, 36 Sup. Ct. 555. If the bill of lading recites that lawful alternate rates based on specific values were offered, such recitals constitute *prima facie* admissions by the shipper and *prima facie* evidence of choice. If in such a case the shipper wishes to contradict his own admissions, the burden of proof is on him. Cincinnati & T. Pac. Ry. *v.* Rankin, *supra.*

[18] See Missouri, Kans. & Tex. Ry. *v.* Harriman, *supra,* footnote 17. Travis *v.* Wells, Fargo & Co. (N. J. 1909) 74 Atl. 444; Bernard *v.* Adams Express Co., *supra,* footnote 10.

[19] A stipulation requiring notice of claims within ninety days was held reasonable in Missouri, Kans. & Tex. Ry. *v.* Harriman, *supra,* footnote 17. See Georgia, Fla. & Ala. Ry. *v.* Blish Milling Co., *supra,* footnote 12, where a stipulation requiring such notice to be in writing was also declared reasonable.

[20] *Supra,* footnote 15. It seems worthy of note, that while under the Carmack Amendment the initial carrier was apparently liable irrespective of whether a through bill of lading had been issued, under the Cummins Amendment this liability attaches only when goods are being carried on a through bill of lading. The circumstances under which a carrier is bound to issue a through bill of lading are covered by Sec. 15 of the Act.

the Commission might authorize or require rates dependent upon released valuation.[21] This would seem to show that the general policy of the Act was to hold the carrier to stricter account, and not to relieve it of burdens imposed upon it by the common law.[22] Of especial significance are the two provisos of the Act relating to notice for filing claims, reading, *"Provided further,* That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however,* That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery."[23] If "caused by it" means simply culpable acts of the carrier, the second proviso would practically cover the field. Except when proceeding directly against the carrier on whose line the loss occurred under his common law right, which the statute expressly preserves, the shipper on a through bill of lading would under no circumstances be required to comply with the stipulation as to notice, and thus the first proviso would seem to be meaningless and mere surplusage. If, however, the liability intended by the Act is that of the common law, then there would be a large class of cases to which the first proviso would apply.[24]

The construction of § 38 of the New York Public Service Act in reference to carriers is in point, the phrase "caused by it" appearing there.[25] This has been construed to impose upon the carrier the liability of the common law.[26] This interpretation was adopted in a Georgia case,[27] in reference to the federal act, and has been approved

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[21] The Cummins Amendment provides, however, that the provisions respecting liability for full actual loss, damage or injury, shall not apply to baggage carried on passenger trains or boats, or trains or boats carrying passengers.

[22] A general reading of the Act would seem to show a general intent on the part of Congress to nullify every effort of the carrier to avoid any part of the responsibility imposed by the common law.

[23] *Supra,* footnote 15. See Manner *v.* Fairfield & E. C. Trans. Co. (N. C. 1918) 96 S. E. 731.

[24] If "caused by it" imposes upon the carrier the common law liability, it would seem that the initial carrier would be liable for any loss occurring on the lines of a connecting carrier, for which the connecting carrier would be liable at common law.

[25] N. Y. Consol. Laws, Public Service Commissions Law, § 38. The same phrase appears in the Colorado statute, Mills Ann. Stat. (1912) § 6098, but its meaning has never been judicially determined.

[26] See Jones *v.* Wells-Fargo Express Co. (1914) 83 Misc. 508, 145 N. Y. Supp. 601, 129 N. Y. Supp. 1030.

[27] Louisville & N. R. R. *v.* Warfield (1909) 6 Ga. App. 550, 65 S. E. 308.

by many of the state courts, commenting upon the Act.[28] The meaning of this phrase has never been definitely decided by the United States Supreme Court, but it has been discussed in numerous *dicta*. The question was fairly raised in *Atlantic Coast Line R. R.* v. *Riverside Mills*,[29] but the court found it unnecessary to decide the meaning of "caused by it", relying instead upon an unrebutted presumption of default by the carrier. However, it did say of the Act that the first carrier shall be deemed to have adopted the succeeding carrier as its agent and to incur carrier liability throughout the route. In *Adams Express Company* v. *Croninger*[30] the court said that "the liability thus imposed is limited to 'any loss, injury or damage caused by it' (the carrier) . . . and plainly implies a liability for some default in its common law duty as a common carrier". In a later case[31] Justice McReynolds commenting on this declaration, said that "Properly understood neither this nor any other of our opinions holds that this amendment has changed the common law doctrine theretofore approved by us in respect of a carrier's liability for loss occurring on its own line." In *Missouri, Kansas & Texas Ry.* v. *Harrison*[32] the court gave the same interpretation to the phrase, saying that the liability imposed by the statute is the liability imposed by the common law upon a common carrier. The question arose again in the recent case of *Chicago & E. I. R. R.* v. *Collins Produce Co.* (1919) 39 Sup. Ct. 89. A carload of chickens was confiscated by the government at Dayton, while under martial law during a flood. In an action against the initial carrier evidence was introduced by the plaintiff that the confiscation had been made at the request of the connecting railroad. The defendant claimed that "caused by it" imposed upon the shipper the duty of showing that the loss was in fact caused by the carrier. The Circuit Court of Appeals[33] ruled that the Carmack Amendment had not changed the common law and that the initial carrier was liable as an insurer. On this issue the case went to the Supreme Court, but again the question was not answered,

[28] See Wright *v.* Adams Express Co. (1910) 43 Pa. Super. Ct. 40, 48; Greenwald *v.* Weir (1909) 130 App. Div. 696, 115 N. Y. Supp. 311. In this case the court said at p. 699: "There is but one liability which can properly be said to be imposed by the statute, and that is the liability of the initial carrier for a loss occurring on the line of a connecting carrier. That is a new liability created and imposed by the statute. The liability of a carrier for a loss upon its own line is not new and is not created or imposed by the statute, but existed before the statute was passed." See, also, Cudahy Packing Co. *v.* Atchison, T. & S. F. Ry. (1916) 193 Mo. App. 572, 187 S. W. 149.

[29] *Supra,* footnote 5.

[30] *Supra,* footnote 17. In this case, the court says at pp. 506, 507, that the phrase "caused by it" reduced what would otherwise be an absolute insurer's liability imposed by the Act to the liability imposed by the common law.

[31] Cincinnati & T. Pac. R. R. *v.* Rankin, *supra,* footnote 17.

[32] *Supra,* footnote 17. See also the *dictum* in Georgia, Fla. & Ala. Ry. *v.* Blish Milling Co., *supra,* footnote 19.

[33] (C. C. A. 1916) 235 Fed. 857.

the decision, following the Riverside Mills case,[34] being put on the ground of a presumption of default due to failure by the defendant to deliver the shipment according to its contract, which presumption had not been rebutted by the proof. But the court did say that "The shipment was not lost by the 'Act of God,' and the defense of the Carrier on the facts was narrowed to the claim that it was prevented from performing its contract 'by the authority of law,'—by the appropriation by the military authorities." If the court had not in mind that the liability of the initial carrier was the insurer's liability imposed by the common law, what would be the meaning of that statement, or of the one following it, that "The common-law principle making the common carrier an insurer is justified by the purpose to prevent negligence or collusion between dishonest carriers or their servants and thieves or others, to the prejudice of the shipper, who is, of necessity, so remote from his property, when in transit, that proof of such collusion or negligence when existing, would be difficult if not impossible." The two statements are clear indicia of the attitude taken by the court in its interpretation of the statute. It is submitted that in view of the history and purposes of § 20 of the Act to Regulate Commerce, and the expression of the federal courts regarding it, that when the issue is so raised as to necessitate a decision on this point, the Supreme Court will follow its *dicta* to the effect that the initial carrier is liable whenever the connecting carrier on whose lines the loss occurred would be liable upon common law principles.[35]

THE SALE OF FOREIGN EXCHANGE.—From the point of view of those engaged in foreign trade and banking, "foreign exchange" is the business of buying and selling orders for the payment of foreign money at a foreign point.[1] The basis of the business of selling foreign credit is the maintenance by the seller of a balance in a foreign bank upon which he can draw according to the amount desired by the buyer.[2] It is not necessary that the seller have, at the foreign point, the credit contracted to be sold at the time he sells it. It is enough

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[34] *Supra,* footnote 5.

[35] It has been held by a number of state courts that if at the time of loss the connecting carrier was acting as a warehouseman the initial carrier is not liable. Adams Seed Co. *v.* Chicago Great Western R. R. (Iowa 1917) 165 N. W. 367; 18 Columbia Law Rev. 361. Whether the United States Supreme Court will adopt this view is doubtful. See Cleveland & St. Louis Ry. *v.* Dettlebach (1915) 239 U. S. 588, 36 Sup. Ct. 177; Southern Ry. *v.* Prescott (1915) 240 U. S. 632, 36 Sup. Ct. 469.

[1] Escher, Foreign Exchange Explained, 1; Withers, Money Changing, 2.

[2] Escher, Elements of Foreign Exchange, 69: "That is indeed the sum and substance of the exchange business of the foreign department of most banking houses . . . the maintaining of deposit accounts in the banks at foreign centers on which deposit account the bank here is in a position to draw according to the wants and needs of its customers." At p. 72: "But under ordinary circumstances, foreign exchange dealers who engage in the business of selling cables carry adequate balances on the other side,